



NOTICES OF PROPOSED RULEMAKING

This section of the *Arizona Administrative Register* contains Notices of Proposed Rulemaking.

A proposed rulemaking is filed by an agency upon completion and submittal of a Notice of Rulemaking Docket Opening. Often these two documents are filed at the same time and published in the same *Register* issue.

When an agency files a Notice of Proposed Rulemaking under the *Administrative Procedure Act* (APA), the notice is published in the *Register* within three weeks of filing. See the publication schedule in the back of each issue of the *Register* for more information.

Under the APA, an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any oral proceedings for making, amending, or repealing any rule (A.R.S. §§ 41-1013 and 41-1022).

The Office of the Secretary of State is the filing office and publisher of these rules. Questions about the interpretation of the proposed rules should be addressed to the agency that promulgated the rules. Refer to item #4 below to contact the person charged with the rulemaking and item #10 for the close of record and information related to public hearings and oral comments.

NOTICE OF PROPOSED RULEMAKING TITLE 2. ADMINISTRATION CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

[R19-84]

PREAMBLE

1. **Article, Part, or Section Affected (as applicable)**

R2-8-301	Amend
R2-8-302	Amend
R2-8-303	Amend
R2-8-304	Amend
R2-8-807	Amend
2. **Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**
 Authorizing statute: A.R.S. § 38-714(E)(4)
 Implementing statute: A.R.S. §§ 38-797 et seq.
3. **Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the proposed rules:**
 Notice of Rulemaking Docket Opening: 25 A.A.R. 1270, May 17, 2019 (*in this issue*)
4. **The agency's contact person who can answer questions about the rulemaking:**
 Name: Jessica A.R. Thomas, Rules Writer
 Address: Arizona State Retirement System
 3300 N. Central Ave., Suite 1400
 Phoenix, AZ 85012-0250
 Telephone: (602) 240-2039
 E-mail: JessicaT@azasrs.gov
5. **An agency's justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:**
 A.R.S. § 38-797.07(A)(7) requires the ASRS to stop paying LTD benefits to a member if the member "ceases to be under the direct care of a doctor." The ASRS needs to clarify what it means to be under the "direct care of a doctor" for purposes of LTD benefits. Similarly, the ASRS needs to clarify the six month waiting period and minimum benefit payments when there is an overpayment or no compensation on file.
6. **A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material.**
 None
7. **A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:**
 Not applicable
8. **The preliminary summary of the economic, small business, and consumer impact:**
 The ASRS promulgates rules that allow the agency to provide for the proper administration of the state retirement trust fund. ASRS rules affect ASRS members and ASRS employers regarding how they contribute to, and receive benefits from, the ASRS. The ASRS effectively administers how public-sector employers and employees participate in the ASRS. As such, the ASRS does not issue permits or licenses, or charge fees, and its rules have little to no economic impact on private-sector businesses, with the



exception of some employer partner charter schools, which have voluntarily contracted to join the ASRS. Thus, there is little to no economic, small business, or consumer impact, other than the minimal cost to the ASRS to prepare the rule package. The rule will have minimal economic impact, if any, because it merely clarifies the long term disability program. Specifically, defining what a "Direct Care of a Doctor or an Attending Physician" means.

9. The agency's contact person who can answer questions about the economic, small business, and consumer impact statement:

Name: Jessica A.R. Thomas, Rules Writer
Address: Arizona State Retirement System
3300 N. Central Ave., Suite 1400
Phoenix, AZ 85012-0250
Telephone: (602) 240-2039
E-Mail: JessicaT@azasrs.gov

10. The time, place, and nature of the proceedings for to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request and oral proceedings on the proposed rule:

An oral proceeding regarding the proposed rule will be held as follows:

Date: June 26, 2019
Time: 9:00 a.m.
Location: Arizona State Retirement System
10th Floor Board Room
3300 N. Central Ave.
Phoenix, AZ 85012-0250

11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

None

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

None of the rules requires a permit.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law, and if so, citation to the statutory authority to exceed the requirements of federal law:

There are no federal laws applicable to these rules.

c. Whether a person submitted an analysis to the agency that compares the rule's impact on the competitiveness of business in this state to the impact on business in other states:

No analysis was submitted.

12. A list of incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

None

13. The full text of the rules follows:

TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

ARTICLE 3. LONG-TERM DISABILITY

Section	
R2-8-301.	Definitions
R2-8-302.	Application for Long-Term Disability Benefit
R2-8-303.	Long-Term Disability Calculation
R2-8-304.	Payment of Long-Term Disability Benefit

ARTICLE 8. RECOVERY OF OVERPAYMENTS

Section	
R2-8-807.	Collection of Overpayments from LTD Benefit

ARTICLE 3. LONG-TERM DISABILITY

R2-8-301. Definitions

The following definitions apply to this Article unless otherwise specified:

1. "Attending Physician" means a provider:

- a. Who is a qualified medical provider or other legally qualified practitioner of a healing art that the claims administrator recognizes or is required by law to recognize;**
- b. Whose medical training and clinical experience are qualified to treat the member's disabling condition;**



- c. Whose diagnosis and treatment is consistent with the diagnosis of the disabling condition, according to guidelines established by medical, research, and rehabilitative organizations;
- d. Who is licensed to practice in the jurisdiction where care is being given;
- e. Who is practicing within the scope of the license; and
- f. Who is not related to the member by blood or marriage.
- 2. "Direct Care" means the member is actively receiving treatment from a provider for the member's disability at least once per calendar year.
- 1-2. "Estimated Social Security disability income amount" means the same as in R2-8-801(2).
- 2-3. "Legal proceeding" means an appeal of an appealable agency decision at the Office of Administrative Hearings pursuant to A.R.S. § 41-1092 et seq. or an appeal of a Social Security determination at the Social Security Administration, or any other review by a formal body, which determines the rights and responsibilities of the member or survivor.
- 3-4. "LTD" means the Long-Term Disability program described in A.R.S. § 38-797 et seq.
- 4. "LTD contribution" means the amount of funds the member remits to the ASRS from the member's compensation as payment for the LTD program.
- 5. "LTD benefit" means the amount of funds the member receives from the ASRS or the ASRS contracted LTD claims administrator, for the period of time a member has an eligible disability as described in A.R.S. § 38-797.07(A)(11).
- 6. "LTD contribution" means the amount of funds the member remits to the ASRS from the member's compensation as payment for the LTD program.

R2-8-302. Application for Long-Term Disability Benefit

- A. In order to claim an LTD benefit, a disabled member shall submit to the disabled member's Employer all the completed forms prescribed by the ASRS contracted LTD claims administrator within 12 months of the date the disabled member became disabled.
- B. Pursuant to A.R.S. § 38-797.07(D), in order to continue receiving an LTD benefit, a disabled member shall submit documentation regarding the disabled member's ongoing disability and occupation as required by the ASRS contracted LTD claims administrator to determine the disabled member's continuing eligibility for an LTD benefit.
- C. Pursuant to A.R.S. § 38-797.07(11), in order to submit an application for an LTD benefit, a member must provide objective medical evidence from an Attending Physician.
- D. Pursuant to A.R.S. § 38-797.07(7)(b)(i), in order to continue receiving an LTD benefit, the disabled member must be under the Direct Care of a doctor.

R2-8-303. Long-Term Disability Calculation

- A. The ASRS contracted LTD claims administrator shall calculate an LTD benefit for a member using the member's monthly compensation as described in A.R.S. § 38-797(11).
- B. The ASRS shall reduce a member's LTD benefit in accordance with A.R.S. § 38-797.07(A). For a member whose monthly compensation is \$0 as of the date of disability, the ASRS shall pay a monthly benefit of \$50 unless the benefit is reduced pursuant to R2-8-807 or required to be reduced pursuant to A.R.S. § 38-797.07(A)(2).
- C. The ASRS shall reduce a member's LTD benefit in accordance with A.R.S. § 38-797.07(A).

R2-8-304. Payment of Long-Term Disability Benefit

- A. The ASRS contracted LTD claims administrator shall begin providing an LTD benefit to an eligible disabled member no sooner than six months after the date the disabled member became disabled.
- B. Notwithstanding subsection (A), the ASRS contracted LTD claims administrator may begin providing an LTD benefit to an eligible disabled member sooner than six months if the disability is related to the member's disability that occurred within six months immediately preceding the disability.
- ~~B-C.~~ The ASRS contracted LTD claims administrator may provide an eligible disabled member's LTD benefit to a third party pursuant to A.R.S. § 38-797.09.

ARTICLE 8. RECOVERY OF OVERPAYMENTS

R2-8-807. Collection of Overpayments from LTD Benefit

Upon disability of the member, the ASRS shall reduce the amount of the disabled member's LTD benefit by the amount of any overpayment the member received from the ASRS and has not reimbursed pursuant to this section ~~to not less than \$50.00.~~